IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.207 OF 2007
IN
EXECUTION APPLICATION NO.68 OF 2003
IN
CASE NO.CC.IV/304 OF 2002

Prasad Co-op.Credit Society Ltd. ....Plaintiff
V/s.
Jayshree Kajrolkar & Ors. ....Defendants

Mr.Vivek Phadke for the Disputant.

Mr.Gautam Bharat for Respondent Nos.2 and 3.

CORAM : S.J. VAZIFDAR, J.
DATED : 3RD DECEMBER, 2007.

P.C. :

1. This Chamber Summons is taken out by Opponent Nos.2 and 3 for an account of the amount recovered by the decree holder, for a refund of excess amount allegedly realized by the decree holder and for prosecution against the officers of the decree holder.

2. The execution proceedings are in respect of a decree passed by the Co-operative Court on 12.7.2002 for a sum of Rs.1,36,639/- together with interest at 21% p.a. The proceedings were filed to recover a housing loan taken by opponent No.1 and guaranteed by Opponent Nos.2 and 3.

3. In the execution proceedings orders were passed under Order XXI Rule 48 of the C.P.C. attaching the salaries of Opponent Nos.2 and 3 with their respective employers.

4. It is not necessary to go into details of the accounts in this Chamber Summons. Suffice it to state that the judgment creditor admits and acknowledges that the entire amounts under execution proceedings in respect of the decree dated 12.7.2002 had been paid. Therefore, the decree dated 2.7.2002 is ordered and declared to be satisfied and shall be deemed to have been marked satisfied.

5. Admittedly an amount in excess of the decretal amount has been recovered by the judgment creditor. The only question is whether the said recovery was towards and pursuant to the said execution proceedings or whether the same was in exercise of the powers under Section 49 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act"). The judgment creditor contends that the excess recovery is in exercise of powers under Section 49 of the said Act in respect of another loan granted by it to Opponent No.3 and allegedly

guaranteed by Opponent No.2. This is denied by the Opponents.

6. The dispute regarding the purported exercise of powers under Section 49 of the said Act cannot be gone into in this Chamber Summons. It is however, clarified that this order is without prejudice to all the rights and contentions of the parties in respect thereof. The Opponents are at liberty to adopt proceedings for recovery of the amounts allegedly wrongly recorded by the judgment creditor. Nothing stated in this order shall reflect on the merits of the contentions of the parties in such proceedings.

7. In view of what is stated above, it is clear that the attachment levied pursuant to the execution of the decree dated 12.7.2002 shall stand raised forthwith. This however, shall not reflect upon the judgment creditor’s rights, if any, to recover the amounts in any other manner.

8. In the circumstances, the Chamber Summons is disposed of with the above clarifications.